

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CR-264-BR
No. 5:12-CV-391-BR

RODNEY WAYNE ADAMS,)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

This matter is before the court on a motion pursuant to 28 U.S.C. § 2255. Petitioner asserts one claim, that is, he does not have the requisite convictions to support his sentence as an Armed Career Criminal (“ACC”) pursuant to United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Pet., DE # 29, at 5.) He requests that his sentence be vacated and that he be re-sentenced without the ACC enhancement. (Id. at 14.)

As the court directed, the government filed a response to the motion. The government acknowledges that petitioner’s claim is meritorious and that the court should order petitioner to be re-sentenced. (DE # 34 at 3.)

Accordingly, the § 2255 motion is ALLOWED. The judgment entered 30 March 2009 is hereby VACATED. Re-sentencing is set for 1 October 2012.

This 15 August 2012.



W. Earl Britt

Senior U.S. District Judge